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Company of America and Berkshire
Life Insurance Company of America*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

CHRISTINA S. PELLICANO,

Plaintiff,

v.

THE GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA and
BERKSHIRE LIFE INSURANCE
COMPANY OF AMERICA,

Defendants.

No. 3:20-cv-01320-SB

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT**

DEMAND FOR JURY TRIAL

Defendants Guardian Life Insurance Company of America ("Guardian") and Berkshire Life Insurance Company of America ("Berkshire") (collectively, "Defendants") hereby answer Plaintiff's Complaint (the "Complaint") by admitting, denying, and alleging as follows.

1.

Paragraph 1 of the Complaint contains a legal conclusion to which no response is required.

2.

Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 2 of the Complaint and therefore deny the same.

3.

With respect to Paragraph 3 of the Complaint, Defendant admits that, at certain times, Guardian has been domiciled in the State of New York and authorized to transact business in the State of Oregon.

4.

With respect to Paragraph 4 of the Complaint, Defendant admits that, at certain times, Berkshire has been domiciled in the Commonwealth of Massachusetts, a subsidiary of Guardian, and authorized to transact business in the State of Oregon.

5.

With respect to Paragraph 5 of the Complaint, Defendant admits that, at certain times, they have engaged in the business of issuing and administering disability insurance policies.

6.

Paragraph 6 of the Complaint contains a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that, at certain times, they have been authorized to transact business and have issued disability insurances policies in the State of Oregon. Defendants deny any remaining allegations in Paragraph 6.

7.

Paragraph 7 of the Complaint contains a legal conclusion to which no response is required. To the extent a response is required, Defendants deny any remaining allegations in Paragraph 7.

8.

With respect to Paragraph 8 of the Complaint, Defendants admit that Guardian issued three disability insurance policies to Plaintiff that were identified by the policy numbers G5890700, G5982210, and G9098850, and Berkshire issued one disability insurance policy to Plaintiff that was

identified by policy number Z9317750 (collectively referred to as “the Policies”). To the extent a further response is required, Defendants deny any remaining allegations of Paragraph 8.

9.

Paragraph 9 of the Complaint contains a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that the Policies were disability insurance policies and provided certain benefits based on the terms of the Policies. Defendants further respond that the Policies contain terms that speak for themselves.

10.

Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 10 of the Complaint and therefore deny the same.

11.

With respect to Paragraph 11 of the Complaint, Defendants admit that, at certain times, Plaintiff submitted a claim for benefits under the Policies. Defendants deny the remaining allegations of Paragraph 11.

12.

Defendants deny Paragraph 12 of the Complaint.

13.

Defendants admit Paragraph 13 of the Complaint.

14.

With respect to Paragraph 14 of the Complaint, Defendants admit that they paid monthly benefits under the Policies from December 28, 2017, through December 28, 2019. Defendants also admit that, on January 16, 2020, Plaintiff was notified in writing that she was no longer eligible for disability benefits under the Policies. Defendants’ written communications in these regards speak for themselves. Defendants deny any remaining allegations in Paragraph 14.

15.

With respect to Paragraph 15 of the Complaint, Defendants admit that, on January 16, 2020, Plaintiff was notified in writing that she was no longer eligible for disability benefits under the

Policies. Defendants deny Plaintiff requested a reinstatement of her claim. Defendants also deny any remaining allegations in Paragraph 15.

16.

With respect to Paragraph 16 of the Complaint (incorrectly numbered as the second “Paragraph 13” in the Complaint), Defendants admits that the Policies contain certain provisions regarding the waiver of premiums. Defendants further respond that the Policies contain terms that speak for themselves.

17.

With respect to Paragraph 17 of the Complaint (incorrectly numbered as the second “Paragraph 14” in the Complaint), Defendants admit that they waived premiums for the period from September 28, 2017, though April 4, 2020. Defendants’ written communications in these regards speak for themselves. Defendants deny any remaining allegations in Paragraph 17.

18.

Defendants deny Paragraph 18 of the Complaint (incorrectly numbered as the second “Paragraph 15” in the Complaint).

19.

Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 19 of the Complaint (incorrectly numbered as “Paragraph 16” in the Complaint) and therefore deny the same.

20.

Defendants deny Paragraph 20 of the Complaint (incorrectly numbered as “Paragraph 17” in the Complaint).

21.

Defendants deny Paragraph 21 of the Complaint (incorrectly numbered as “Paragraph 18” in the Complaint).

22.

Defendants deny Paragraph 22 of the Complaint (incorrectly numbered as “Paragraph 19” in the Complaint).

23.

Defendants deny Paragraph 23 of the Complaint (incorrectly numbered as “Paragraph 20” in the Complaint).

24.

Except as specifically admitted herein, Defendants deny each and every allegation in the Complaint and the whole thereof.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure of Condition Precedent)

25.

Plaintiff failed to satisfy all necessary conditions to assert and prevail on her claim against Defendants. Plaintiff’s claim, therefore, should be dismissed in whole or part.

SECOND AFFIRMATIVE DEFENSE

(Compliance and Proper Determination)

26.

To the extent Plaintiff is alleging contractual claims, Defendants’ actions were in compliance with applicable law and the Policies. Further, any determination of benefits made by Defendants was proper pursuant to the Policies.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate)

27.

To the extent that the Plaintiff has sustained any damages for which she is entitled to a recovery, Plaintiff failed to take reasonable steps to mitigate her damages and/or avoid foreseeable consequences.

FOURTH AFFIRMATIVE DEFENSE

(Attorney Fees)

28.

To the extent that any portion of Plaintiff's Complaint is without foundation, fact, and/or law, Defendants are entitled to their actual attorney fees in defense of this action.

RESERVATION OF RIGHT TO AMEND

29.

Defendants reserve the right to interpose further defenses to which they may be entitled as revealed by further proceedings and reserve the right to amend their answer to assert any such defense.

JURY DEMAND

30.

Defendants request a trial by jury of all issues so triable in this action.

WHEREFORE, Defendants pray for judgment as follows:

1. Dismiss all claims and allegations against Defendants in the Complaint;
2. Discharge Defendants from this action and release Defendants, including their successors, affiliates, subsidiaries, agents, employees, and attorneys, from all liability for any claims to the monies of and any claims regarding the Policies;
3. Award Defendants their reasonable attorney fees, costs, and disbursements incurred in this action; and

4. Order such other and further relief as is just and equitable.

Dated this 13th day of August, 2020.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ Jeffrey Hern

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*Attorneys for Defendants Guardian Life
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 2020, I caused to be served the foregoing
DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S

COMPLAINT on the following party as follows:

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☐ Email
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☐ Other (specify) _____

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☒ Electronic service
☐ Other (specify) _____

Of Attorneys for Plaintiff

s/ Jeffrey Hern

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